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SUBJECT: CHEMICAL WEAPONS CONVENTION (CWC): WRAP-UP CABLE -
INDUSTRY INTERSESSIONALS, MARCH 2004

This is CWC-37-04.

Summary

11. (U) As a result of the March industry cluster meetings, the March Executive Council will have several industry issues for States Parties to consider. Two decisions, one on Captive Use and the other on Clarification Requests, appear ripe for adoption by the Executive Council. In addition, three sets of EC report language have been circulated which contain 'actionable' instructions to the Technical Secretariat by States Parties to improve operations in the

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areas of transfer discrepancy clarification requests, Schedule 2 facility agreements, and streamlining of the Declaration Handbook.

Captive Use

12. (U) Discussions on Captive Use focused on whether States Parties consider it necessary to clarify Schedule 1 captive use production as declarable. However, as an introductory comment, the facilitator (Rudduck, UK) noted that consensus on Schedule 2/3 Captive Use has yet to be joined by the Indian delegation. In response, the Indian delegation acknowledged it still lacks guidance, but indicated it expects to have guidance in time for the 36th Executive Council Session, scheduled for March 23-26. Regarding Schedule 1 captive use production, although States Parties appear to agree that Schedule 1 captive use production is declarable, some States Parties argued that a decision is unnecessary because no such production has been demonstrated to be taking place.

13. (U) States Parties, including Canada, India, Denmark and Italy voiced concern with establishing 'rules for the sake of rules,' despite the examples (especially of the synthetic pain-killer, Meperidine or Pethidine) provided in the German paper circulated in January 2004. In defense of the need to clarify that Schedule 1 captive use production is declarable, Germany argued that even if companies altered the pathways or found substitutes to the examples provided, the case remains that the Schedule 1 intermediate pathway is in the open-source and its use cannot be ruled out.

14. (U) Del indicated that, under U.S. regulations, production of a Schedule 1 chemical in excess of applicable thresholds must be declared, regardless of its status as an intermediate or final product. Del indicated further that the examples provided by the German delegation, especially those involving published pathways using Schedule 1 as intermediates, indicate past production and consumption of Schedule 1 in 'captive use' situations. Noting that, although the U.S. is not aware of any such current production using these pathways, further consideration of this issue by States Parties appears warranted to ensure that States Parties understand "all" subject production is declared, per the Convention. The discussion concluded with an appeal by the facilitator for experts to further consider the German paper and examples.

Schedule 2A/2A* Low Concentrations

5 (U) To assist in deliberations, the facilitator (Wade, UK) circulated both a revised decision text and a UK paper regarding proliferation risk of PFIB to States Parties. During the consultations, States Parties primarily focused on proliferation risk and associated low concentration of PFIB.

16. (U) In a break from the norm, Japan was most outspoken, indicating it does not view information provided by the UK as

sufficient to justify a low concentration for PFIB. Japan noted their legislation currently adopts a 30% concentration for Schedule 2A/2A* and that significant information would be necessary to justify altering their legislation to such a low concentration. Technically speaking, Japan noted that a .1 percent concentration for PFIB is impractical, given that any plant engaged in the pyrolysis of fluoropolymers is producing PFIB as a by-product, which would be extremely difficult to regulate or identify. Japan also noted that the difference between Schedule 2 chemicals and Schedule 3 is industrial use, not the manufacturing process (note: this argument appears to be intended to counter the UK assertion that adopting the same concentration for Schedule 2 and 3 eliminates the intent of the Schedules to assign hierarchy of risk, based on the chemicals).

17. (U) In response to the UK paper distributed during the meeting on proliferation risk, the Japanese suggested the proliferation risk by theft of PFIB is minimal, given that PFIB is gaseous at room temperature, making any theft difficult due to the need for proliferators to have both direct access to in-process infrastructure and gas cylinders. Japan noted further that PFIB and phosgene are both choking agents, and that phosgene is more readily available in industry. Therefore, Japan argued, phosgene would be a preferred alternative to PFIB for would-be proliferators.

18. (U) Germany seconded the Japanese intervention, noting their legislation is also set at 30 percent, and called for States Parties gathered to identify their applied thresholds to get a clear picture of the situation. (Note: The table was unable to complete its circle of identifying current thresholds because delegates in attendance either did not know or "did not have guidance" to address what thresholds they currently apply in their implementation measures). Germany followed that the UK presentation lacks justification sufficient to make such a dramatic change from 30 percent to below 1 percent. India agreed, adding that .1 percent or .5 percent for PFIB is not acceptable and indicated it also has reservations about the ability to measure or calculate low concentrations. France, too, indicated it is concerned about the amount of information available to justify changing their concentrations from 30 percent to such a low concentration and supported Indian concern regarding the ability to measure and verify such low concentrations.

19. (U) During discussions, Del advised States Parties that the issue remains under consideration as to what the U.S. believes is the appropriate concentration threshold for 2A/2A* chemicals. Del noted that the U.S. Implementation Act currently sets the concentration threshold for such chemicals at 30 percent and indicated that, for obvious reasons, information regarding proliferation risk is essential for evaluation and, should it become necessary, to persuade legislators to reduce the current 30 percent to a significantly lower concentration. The work of the UK facilitator and experts would assist in our deliberations and Del expressed appreciation for their efforts. Del also added, in response to the Indian and French concerns on calculations as the basis for declarations, that paragraph 4 of the "Boundaries of Production" decision text already indicates that "indirect measurements" derived from "chemical process, a material balance, or other available plant data" clearly include calculations as a sufficient basis for declarations and the issue would not need to be addressed in any draft decision text.

110. (U) Italy and Switzerland were the only delegations to indicate their concentration levels were currently below 30 percent. Italy's threshold is .5 percent and Switzerland's is 1 percent.

111. (U) COMMENT: The UK was caught off-guard by the indications that the information presented appeared, to some States Parties, insufficient to justify moving off 30 percent to such low concentrations. It was clear from the discussions that many States Parties (namely, Germany, Japan, France, India) are yet, not persuaded. The UK called Del shortly after consultations, indicating that the UK paper on proliferation risk was generated in anticipation of U.S. internal deliberations and that he hoped we would find it useful.

Facility Agreements

112. (U) Discussions regarding facility agreements proceeded quite well. Essentially, the discussion was a table vote in support of the Facilitators' (Abe, Japan and Heizner, Switzerland) proposed way forward to provide EC report language encouraging the TS to assume more flexibility in deciding whether to negotiate facility agreements for Schedule 2 facilities. The TS indicated their guidelines would take into consideration the complexity of the plant (e.g., consumption and processing versus production), level

of production, frequency of inspection, likelihood of plant alterations, interests of States Parties and any additional health and safety or plant site-specific issues. In support of the facilitators way forward were: Denmark, Italy, China, U.S., U.K., Netherlands, Germany, France, Canada, Korea, Switzerland, and the Czech Republic.

¶13. (U) India voiced hesitation in that "flexibility" remained undefined and questioned the 'next steps' of the facilitators. In response, the facilitators indicated an intent to continue discussions to streamline the facility agreements and seek efficiencies in the process, but that as an initial step in reducing the number of facility agreements, they would like to recommend to the EC that States Parties support the TS implementation of guidelines that would expand the criteria currently used (which is limited to: does the site exceed thresholds and is the site expected to remain declarable) to include elements of frequency of inspection, plant site complexity and characteristics.

¶14. (U) Iran remained the only delegation not to voice support for the proposed effort, citing that it was unlikely to have a position on the facilitator's proposal due to holidays leading up to and during the March EC Session. Substantively, the Iranians noted that they continue to disagree that there is 'flexibility' in the treaty not to negotiate facility agreements, noting that for Schedule 3 agreements there exists an option not to conclude but that the default position for Schedule 2 facilities appears to be to conclude an agreement unless there is evidence to suggest one is not necessary. (NOTE: Del understands Iran does not have any schedule 2 facilities so their 'purist' stance on this issue is unclear.)

Clarification Requests

¶15. (U) Apart from some minor edits to the proposed decision text distributed to States Parties in January, the discussion on Clarification Requests achieved 'ad ref' consensus for consideration of the document at the 36th EC. The only significant addition to the text was proposed by the Cubans, who suggested that in order to facilitate responses to plant site inspectability clarification requests, the TS could issue a reminder, 60 days after the issuance of the clarification request, of the need to respond to the request. The facilitator (Williams, U.S.) also distributed draft EC report language for State Party consideration that attempts to capture the instructions of States Parties to the Technical Secretariat regarding reconciliation of transfer discrepancies.

¶16. (U) During preparatory discussions on addressing the issue of plant site inspectability, discussions with the TS indicated some interesting facts. Out of the 82 clarification requests issued that the TS considered associated with plant site inspectability, 216 plant sites were affected. The reason this number is not 82 is that the TS only reports clarification requests, of any sort, by

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individual letter to a State Party - not by individual question or line item. For example, a clarification request to a State Party regarding 150 transfer discrepancies or 9 plant sites for which the TS cannot determine the inspectability will only be reported to the EC as a single clarification request.

¶17. (U) Of the 216 plant sites involved, 128 were Schedule 2, 69 were Schedule 3 and 19 were OCPFs. For Schedule 2 facilities, 119 sites can be attributed to missing submissions (e.g., incomplete declarations for 3 previous calendar years) or no declaration or nil declaration submitted, 2 sites can be attributed to missing forms 2.3 (e.g., declared as plant sites, but no plant declaration), 1 site failed to declare a quantity threshold and 6 other sites were missing "other" information (e.g., address, unscheduled chemicals, incorrect CAS numbers or chemical name). For Schedule 3 facilities, 59 sites can be attributed to missing submissions or no declaration or nil declaration submitted, 6 sites can be attributed to missing forms 3.2 and/or 3.3 and/or 3.4 (e.g., declared as plant sites, but no plant declaration), and 4 sites failed to declare a range code. For OCPF facilities, 1 site can be attributed to missing submissions or no declaration or nil declaration submitted, 11 sites failed to declare a PSF plant number or an aggregate quantity for production, and 7 other sites were missing "other" information (e.g., address, range codes, etc.).

¶18. (U) Based on the information above, at least 37 (less the missing submissions) declared plant sites avoided inspection in 2003 due to the TS clarification request process of withholding inspections pending a response when

plant site inspectability is in question. (NOTE: 'Missing submissions' are left out of this total because, although extremely disconcerting, they are not necessarily germane to the clarification requests and inspectability of plant sites, which are triggered by a declaration submission. Rather, 'missing submissions' are consequence of non-submission by a State Party.)

Handbook on Chemicals

119. (U) The facilitator (Ruck, Germany) invited Greg Linden, Chief of the TS/Information Services Branch, to brief participants on the status of activities regarding electronic submission, manipulation, and retrieval of data. During his briefing, Linden reviewed the TS desire to facilitate electronic submissions by SPs, the benefits electronic submissions will have on its ability to implement, monitor, and report to SPs on verification activities, and the timetable in which the TS hopes to accomplish this task.

120. (U) Specifically, Linden reported that the full Verification Information System (VIS) is expected to come on-line in March 2005, the TS has completed the initial phase (delineation of system and security requirements and determination of TS end-user requirements), and is in the second phase (documenting system modules and verification of system design and implementation). Linden emphasized that the TS system is intended to be compatible with electronic data formats used by State Parties electronic industry declarations, but the TS system is not being designed as an end-user tool for States Parties. The TS system that bases its read/write capability on the common transmission file structure (CTFS) is intended to be flexible enough to handle files generated by multiple systems.

121. (U) Delegations welcomed the briefing, although most did not bring technical experts. The majority of the questions were oriented towards State Party data submissions and compatibility between the TS and SPs' industry databases. Italy, Slovak Republic, and India each emphasized that a 'tool' should be provided by the TS to enable States Parties to submit data electronically. Switzerland briefly reviewed its software 'tool' for distribution to States Parties which uses the CTFS structure and is based on Microsoft Access, which it hopes will facilitate States Parties' ability to submit and archive data electronically. Japan and Germany indicated they generally support the move to electronic data declarations but noted reservations regarding the security of such a system. Linden acknowledged that the security concerns are paramount in the development of the VIS and he reviewed the role played by the Security Audit Team (SAT) to assure SPs that the VIS will protect confidential data. Both the Del and the UK voiced support for the move to an electronic database system and reviewed their own efforts to develop domestic electronic submission and archival systems. Both reported their decision to move towards web-enabled systems to minimize the burden of semi-annual data declarations on industry.

Transfers to Non-States Parties

122. (U) Discussion on transfers of Schedule 3 chemicals to non-States Parties went nowhere. States Parties continue to hesitate on discussing end-use certificates, current transfer control procedures or specific, "minimum standards" or "best practices" which could be approved. Only the U.K., Australia, and the United States ventured out to provide a brief overview of current practice under end-user certificates. Following the consultations, the facilitator (Rae, NZ) asked the new Vice-Chair of the Industry Cluster (Amb. Vogelaar, Neth), UK and US representatives to discuss how to move forward on this issue. The facilitator is leaving summer 2004 and does not sense a commitment by States Parties to justify seeking a replacement to continue discussions.

123. (U) After discussing various options, it was suggested that the issue may be best left to the work on implementation of Art. VII, due to the fact that certain countries are not meeting their obligations and that discussing other measures in the absence of basic compliance is preliminary, at best. Therefore, Art. VII work on implementation, which includes transfer-related issues, may be the most appropriate forum on which to focus on implementation first and then consider "other measures" as necessary down the road. Vogelaar indicated this option may be the most efficient and expedient manner in which to "euthanize" the issue. Del anticipates that the facilitator's report to the March EC will simply note that the issue will continue to be discussed within the ongoing implementation activities under Article VII. In follow-up conversations with the facilitator, it appears that he wants to give one more shot at finding a replacement

facilitator, as opposed to simply shifting the issue to another facilitation.

OCPF Site Selection

124. (U) Theo Juurlink/TS presented an overview of the current TS selection methodology (the "A14") and provided an initial assessment of the impact of a change to the proposed Swiss-U.S. methodology during the March consultations. The U.S.-Swiss paper was provided to States Parties to facilitate their understanding of the concepts of the proposed selection mechanism. Both were well-received by States Parties with ensuing discussion focused on how to implement the system, with many delegations expressing concern that TS' and SPs' allocation of points might politicize the OCPF inspection regime.

125. (U) States Parties considered whether the TS might retain the A14 method to distribute its points, whether TS points should be on an equal footing with those submitted by SPs, and if TS estimates of the additional administrative burden required to receive, analyze and publish lists of inspectable sites for SP consideration were realistic. The TS, Del and Swiss representatives fielded these questions,

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and in the end, States Parties appeared to focus on how best to balance the provisions of the Convention for accommodating SP nominations in a manner that does not rely upon States Parties to 'politically' identify specific SPs. States Parties considered how to make their nominations by choosing sites or activities of concern rather than nominating regional groups or specific countries. SPs seemed to think that further examination of the allocation nomination points via 'rule(s)' could prevent overt politicization.

126. (U) Javits sends.
SOBEL